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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID C. LODA

Appeal 2010-003320
Application 10/082,958
Technology Center 2400

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY, III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-4, 6-8, and 10-19. Claims 5 and 9 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We reverse and enter a new ground of rejection under 35 U.S.C. § 112, second paragraph, against claims 10, 11, and 19.

The Invention

The disclosed invention relates generally to a system for remotely monitoring a deployed product (Spec. 1).

Independent claim 1 is illustrative:

1. An integrated system comprising:
 - a portal having at least one software tool for analyzing, organizing and sorting at least one form of data for access by at least one community of users, each community having secured access to at least one form of data relevant to said community;
 - a server communicating with said portal;
 - at least one wireless local area network in communication with said server;
 - at least one mobile device in wireless communication with said at least one wireless local area network;
 - a visual data device in communication with said at least one mobile device; and
 - a means for enabling two-way communications between said portal and said server, wherein said at least one mobile device comprises a PC tablet.

The References

The Examiner relies upon the following references as evidence in support of the rejections:

Charles	US 6,449,103 B1	Sept. 10, 2002
Boykin	US 6,831,556 B1	Dec. 14, 2004
Thompson	US 7,068,301 B2	Jun. 27, 2006
Pugliese	US 2001/0044751 A1	Nov. 22, 2001

The Rejections

The Examiner rejects claims 1-4, 6-8, 10-12, and 14-19 under 35 U.S.C. § 103(a) as being unpatentable over Charles, Pugliese, and Thompson and claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Charles, Pugliese, Thompson, and Boykin.

ISSUE

Based on Appellant's arguments, we identify the following issue: Did the Examiner err in finding that it would have been obvious to one of ordinary skill in the art to have practiced the claimed invention over the cited references?

PRINCIPLES OF LAW

35 U.S.C. § 112, second paragraph - indefiniteness

The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. *In re Warmerdam*, 33 F.3d 1354, 1361 (Fed. Cir. 1994).

35 U.S.C. § 103(a) – Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

ANALYSIS

The Examiner finds that Charles discloses a portal (“Figure 178, Item 178L” – Ans. 5), a server communicating with the portal, a wireless local area network in communication with the server (“Figure 178-179, Items 179e” – Ans. 5) and a mobile device in wireless communication with the wireless local area network (“Figure 179, Items 179t, 179r, Column 59 Lines 5-25, Column 60 Lines 1-15” – Ans. 5) as recited in claim 1. Appellant disputes the Examiner’s findings.

Claim 1 recites a portal that has a software tool for analyzing, organizing and sorting at least one form of data for access by at least one community of users. We agree with Appellant that Charles lacks substantial description of “Item 178L” illustrated in Fig. 178 of Charles and does not appear to disclose what software tools, if any, are contained in “Item 178L” (App. Br. 9). Nor has the Examiner demonstrated where in the Charles reference “Item 178L” (equated with the claimed “portal” by the Examiner) is disclosed as including such a “software tool” as claimed.

Also, claim 1 recites a server communicating with the portal. While the Examiner finds that “Item 179e” in Fig. 179 of Charles discloses the

server as claimed (see Ans. 5), the Examiner has not demonstrated that “Item 179e” communicates with “Item 178L” (equated with the claimed “portal” by the Examiner). Figs. 178 and 179 appear to illustrate the two components as separated by other components and, as Appellant points out, Charles does not appear to provide any textual description of the disputed components much less textual description of any communication between “item 178L” and “item 179e” (App. Br. 9-10). Nor does the Examiner point to any such disclosure in Charles.

Appellant also argues that Charles fails to disclose or suggest a wireless local area network in communication with the server (App. Br. 9-10) as recited in claim 1. The Examiner states that Charles discloses “applications including surveillance and inspection . . . for the captured images,” “images are used in multiple portal virtual reality projection embodiments” and that “the system includes interactive input devices” (Ans. 15). However, even assuming that Charles discloses surveillance applications, images being utilized in multiple embodiments, and a system that includes input devices, the Examiner has not demonstrated that Charles also discloses or suggests a wireless local area network in communication with “item 179e” (equated with the claimed server by the Examiner).

The Examiner also does not demonstrate that Pugliese, Thompson and/or Boykin cure the disputed deficiencies of Charles.

Claim 14 recites similar features as claim 1.

Accordingly, we conclude that the Examiner erred in rejecting independent claims 1 and 14, and claims 2-4, 6-8, and 12-18, which depend therefrom.

New Ground of Rejection -- 37 C.F.R. § 41.50(b)

Using our authority under 37 C.F.R. § 41.50(b), we reject claims 10, 11, and 19 under 35 U.S.C. § 112, second paragraph as being indefinite.

Claims 10, 11, and 19 depend from claim 9, which has been canceled. Since claims 10, 11, and 19 depend from a canceled claim, one of skill in the art would be unable to determine the metes and bounds of the claims as the skilled artisan would not have been reasonably apprised of claim scope and would not be clear what other limitations might apply to the claims.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in finding that it would have been obvious to one of ordinary skill in the art to have practiced the claimed invention over the cited references.

DECISION

We reverse the Examiner's decision rejecting claims 1-4, 6-8, and 12-18 under 35 U.S.C. § 103.

In a new ground of rejection, we have rejected claims 10, 11, and 19 under 35 U.S.C. § 112, second paragraph as being indefinite.

In addition to reversing the Examiner's rejection(s) of one or more claims, this decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides that "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REVERSED
37 C.F.R. § 41.50(b)

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